

White list / Institutions Worth a Closer Look - Middle East & Africa

20 October 2023

Overview

In 1997, Judge Charles Brower published a piece in *The American Journal of International Law* on the history of arbitration in the Middle East. It described “three phases”.

Phase one – World War II to the 1970s – comprised cases ending poorly for the Arab side, usually a state – such as *Petroleum Development (Trucial Coast) Ltd v Sheikh of Abu Dhabi*. In those cases, European arbitrators gave short shrift to arguments from shariah law.

Phase two was thus a shunning of arbitration in the region. Little wonder, perhaps.

But not for long. Arbitration is dear to Arab tribal culture, it turns out. As Bahraini Minister of Justice, Sheikh Khalid bin Ali Al Khalifa, once said, “Arbitration harmonises with an Arab’s psychological make-up – which is imbued with sentimentalism and which is more at home with a spirit of peace, goodwill and conciliatory brotherhood.”

So phase three was the re-embrace and flowering of regional arbitration providers, to the point where – as Reza Mohtashami QC (a GAR editorial board member and Three Crowns partner), quipped at a GAR event – “the tiny island of Bahrain is [now] home to three arbitral centres.”

And this latest phase shows no sign of abating. In just the past few years, Saudi Arabia has launched a new centre (amid much fanfare), Abu Dhabi is about to, and others (notably in Bahrain and Dubai) are tying to bulk up.

So is the Middle East now a proverbial arbitral paradise?

Not entirely. There’s still a certain capacity to surprise. Not so long ago the UAE (briefly) stripped arbitrators of their immunity and threatened to impound their passports (since clarified and reversed). More recently, Dubai expunged an arbitral institution (the very successful DIFC-LCIA), which has left some questioning its safety as a seat. Time will tell if those wounds will heal.

Judges have historically been a weak point.

Essam Al Tamimi, one of the UAE’s most revered arbitration specialists, once put it thus. “There has been a persistent lack of certainty”, he said, on how a court will respond to an arbitration point.”

“You will bring the same case you brought last year – and which got a good result [then] – put it back in the same pipeline and get a bad judgment, different from the previous one,” he told a GAR event in Istanbul.

Happily, there things may be improving. In the same speech, Al Tamimi noted that arbitration is now a core syllabus subject for lawyers training in the Arab League, so “90 per cent of judges will be properly trained in it, not just 10 per cent like now.”

Free-zones have helped. Across the region special financial “free-zones” are flourishing: the Qatar Financial Centre, the Abu Dhabi Global Market, and their equivalents in Bahrain. And Dubai’s “DIFC”.

These free zones often have their own courts, run by foreign judges. In turn, these exert an improving influence on their local counterparts. As someone explained to GAR, it’s a bit like when the first house in a somewhat run-down street is renovated. All the other homeowners begin to feel a bit more embarrassed about the state of their property.

So regional arbitration in Middle East, if it’s suggested, should always be considered.

In Africa – a little more caution is advised, but the direction of travel is good. There are now two regional African arbitration associations – around which an arbitration bar is crystallising (see the Clubs & Associations directory). That should in turn, raise arbitration literacy and in turn create more safe arbitral seats. At present there aren’t enough safe seats.

Erring on the side of caution, for now, we include just two African centre in our selections below.

Here, then, are our recommendations for the Middle East and Africa.

White List

- Bahrain Chamber of Dispute Resolution (BCDR) (promoted from Worth a Closer Look)
- Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Institutions Worth a Closer Look

- Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)*
- Casablanca International Mediation and Arbitration Centre (CIMAC)
- Common Court of Justice and Arbitration (CCJA)
- Dubai International Arbitration Centre (DIAC)
- Kigali International Arbitration Centre (KIAC)
- Mauritius International Arbitration Centre (MIAC)
- Qatar International Centre for Conciliation and Arbitration (QICCA)
- Saudi Centre for Commercial Arbitration (SCCA) - new for this edition

** will soon be replaced by a new initiative - the Abu Dhabi International Arbitration Centre*

White List

Bahrain Chamber of Dispute Resolution (BCDR)

What is it?

Initially it was a partnership between the Bahrain Ministry of Justice and the American Arbitration Association, which launched in 2010, inside an “arbitration free zone”.

Since then it has dropped the AAA association and is now known simply as the BCDR.

What’s an arbitration free zone?

Parties can nominate the law of any country to govern their arbitration, creating a virtual seat. It means awards can’t be challenged before the local courts.

It wasn’t always on the White List – why did you promote it?

The BCDR always appeared to be a well-run institution with a growing reputation in the region and the backing of a great board, that included such luminaries as Stephan Jagusch KC, Reza Mohtashami KC, Elie Kleiman and Jan Paulsson. It was particularly active on the academic and though leadership side, and has begun to rival Cairo as an educator on arbitration for the Arab world.

It wasn’t on the White List because of some uncertainty on our part regarding its case numbers (explained below). But that’s now gone away, and as soon as it did we moved it higher.

Who should take credit?

Nassib Ziadé is the CEO, and it’s under his watch the BCDR has grown.

He arrived in 2013 after running the DIAC in Dubai. Before that, he was de facto head, ICSID (the International Centre for Settlement of Investment Disputes in Washington, DC). He’s Lebanese-Chilean.

The registrar is Ahmed Husain, a distinguished local practitioner. It’s seen as helpful that between the holders of the top jobs one is international and one from Bahrain.

How busy is it?

This was the mystery for many years. The BCDR didn't seem to like releasing statistics. That's now changed.

An early draft of its annual reports shows it had 45 new cases in 2022 (a little down, but not much from the 51 a year before). It's been averaging 47 new cases a year, of late.

Of those 36 were "section one" cases – which go to the BCDR Court – and 9 were "section two". It's now had 29 section two cases in three years.

What's the significance of "section one" and "section two"?

The BCDR has been given "automatic jurisdiction" over certain local disputes (those that exceed US\$1.3 million in value and either feature a licensed financial institution or are of an "international commercial nature", which usually means one side is foreign).

These are "section one cases", also known as the BCDR Court.

With section one cases, the parties haven't "opted in" to arbitration. It happens regardless of 'consent'. The process is a little different too. For section one cases, both wing arbitrators have to be local judges, who get appointed to the tribunal by a judicial committee. Only the president of the tribunal is appointed by the BCDR. As a result, some have suggested the BCDR should be viewed more like the DIFC or ADGM courts than an arbitral institution.

But does the BCDR hear "ordinary" arbitrations too?

It does – under what's known as a "section two". Section two cases are arbitration in the usual sense (ie, based on party consent expressed through an arbitration clause).

In its life the BCDR has heard a lot more section one cases than section two. Of the 350+ requests its received, 42 were section two.

Many of the section two cases, however, have been big ticket items. And 29 of them (more than two-thirds) arose in the past three years. So the BCDR can finally be said to be ratcheting up the experience on section two.

It's in part because of the increase in section two figures that GAR gave the BCDR its coveted "arbitral institution that has impressed award" in March 2022, and that it was duly promoted to the White List.

What does the BCDR say about the mismatch between section one and two numbers?

It downplays the importance. It says that the skills required for both tracks are identical, and that section one cases can be thought of as "the best of both worlds" – arbitration and litigation.

It does mean though that the BCDR is a bit less experienced than one might expect in dealing with arbitrator challenges. Until recently it had only dealt with around four in its whole 10 years, none requiring a final decision.

One reason for that may have been some hygiene elements in its rules that reduce the incidence of problems that would otherwise cause challenges (a prohibition against double hatting by chairs in section one cases, for example, and away to obtain a different judge to that proposed by the judicial committee). Still, it is something different about the BCDR vis-à-vis other institutions.

You say "until recently" ...

Yes. The BCDR has now delivered a full challenge decision. The 28-page decision by Nassib Ziadé from 2022 should become public in due course. It deals with, among other topics, double-hatting.

Are there any other recent developments?

It was asked to be an appointing authority by the PCA in 2022 – for the first time. The BCDR made two appointments in the end – for a defaulting party and then the president, after the co-arbitrators deadlocked.

What does it do away from casework?

The BCDR is a big educator in the wider Arab world. It conducts judicial training (with ICCA) and translates key texts (eg, the ICCA's guide to the New York Convention into Arabic for the benefit of all).

It also has several regular publications, including a much-praised arbitration journal. One trusted GAR source in the region said he is “seriously impressed” with the BCDR’s academic output. It also keeps its website immaculately up to date and organises a large pre-Vis-Moot moot, which now has 650+ alumni. And it represents Bahrain at UNCITRAL.

What are the rules like?

They’re seen as e good. They had a big update in 2017 – led by Ziadé, Adrian Winstanley (formerly the director general of the LCIA) and Antonio Parra, former deputy secretary general of ICSID – and were updated in 2022. The 2022 update added provisions on third party funding and security for costs.

So will Bahrain and the BDCR emerge as a regional hub?

It’s hoping to. In its early days, antipathy from the UAE and, more so Qatar (Bahrain’s historical rival over many issues) seems to have held things back.

A lot depends on what happens now with Saudi Arabia. The logic behind Bahrain as a seat and arbitral provider was for many years to be Hong Kong” to Saudi’s China: The neutral but sympathetic place on the border. But with Saudi letting in fresh air and sunshine fast, Saudi may not be the Saudi of old much longer. Bahrain may need a new idea.

Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Why is it on the White List?

CRCICA is the “granddaddy” of Middle Eastern arbitration. It’s over 40 years old, has heard 1,000-plus cases, many of which were international, and is a general source of inspiration to other providers in the region, and more widely in Africa.

Who set it up?

CRCICA was founded by the Asian–African Legal Consultative Organization (which also founded four other regional arbitration centres: the Asian International Arbitration Centre (the AIAC); the Lagos Regional Centre; the Tehran Regional Centre (TRAC); and the Nairobi Regional Centre.

But of those, Cairo has always had the most traction.

What are its strengths?

It’s experienced – it’s old enough and busy enough to have seen most situations at least once – and generally well managed.

Who deserves the credit?

CRCICA has had a series of highly respected directors. For many years it was led by Mohamed Aboul-Enein, a charismatic former judge and law professor who was one of the first regional figures to gain celebrity on the international arbitration circuit.

Tragically, he suffered a fatal car accident in 2008 (en route to an international arbitration event). He was succeeded, first, by Nabil Elaraby (an ex-diplomat and international judge) and when Elaraby became a minister by Mohamed Abdel Raouf.

More recently, Ismail Selim has been the director, with Dalia Hussein as deputy.

What’s its diet of work?

Rivals like to joke that a typical CRCICA case is a small dispute heard by a three-person tribunal. Like all good jokes, there’s a kernel of truth. But big disputes go there too. It’s heard plenty of oil and gas and telecoms matters in its time, all worth billions of Egyptian pounds.

And the mix of users is genuinely international. A snapshot in 2018 showed US parties were the most regular foreign users (with nine cases), followed by Saudi Arabia, Lebanon and Russia. It’s also served parties from Italy, Belgium, China, Germany, Kuwait, the Netherlands, Sudan and the UK.

How busy is it?

It had 83 new requests for arbitration in 2022. It’s had between 70 and 90 new cases a year since 2012. It’s best ever year was 2016 when it had 91.

Who gets appointed as arbitrator?

It tends to appoint arbitrators from around its region, largely because most of its cases are Arabic (historically 85 per cent). Parties can in theory appoint whomever they like – there's no list system or need for prior-approval from the centre.

Could more internationals in time choose to sit there?

Well, two French lawyers Caline Mouawad and Rocío Digón analysed CRCICA's latest rules for the International Journal of Arab Arbitration, and speculated as such. Those rules, among other things, increased the rate of pay. But there's not a lot of signs that is happening yet.

Is it true it is hoping to attract a lot of African work?

CRCICA has said at various times that African work is its future. It believes that African parties are delighted to visit Cairo, to which there are lots of direct flights. It's also a lot more affordable for them than obvious other locations.

To that end over the years its put on various Africa-themed events including one "African arbitration week", partnering with the ICCA, in 2017.

What else does it do?

CRCICA is pretty good at educational and outreach programmes. It's partnered with part of the American Bar Association on programmes aimed at newly qualified lawyers since 2009.

More recently, it created four courses, one on each phase of an arbitration, in tandem with the Cairo branch of the Chartered Institute of Arbitrators. From time to time it runs international arbitration advocacy training based on the GAR Guide to Advocacy.

What sorts of cases are particularly suitable to send there?

If local enforcement is expected, then there's a definite advantage to using CRCICA. Egyptian courts respect it. CRCICA's rules also have some useful elements if one is worried about what might be called local "worst practice" by the opponent's arbitrator.

What sorts of worst practice?

Article 8/5 anticipates a common problem: the arbitrator who is bent on delaying the process. The centre can reject a proposed appointee for a "past failure to comply with duties", among other things (ie, a bad track record).

The flip side of this is article 12. This allows the centre to remove an arbitrator who is failing to act or has become incapacitated. Both rules require at least one oral hearing to be held following any such substitution.

What are the rules like?

The centre is extremely proud of its rules. It has gone so far as to describe the rules as an "an original version" of the UNCITRAL package, such is the care with which they transpose certain alien concepts into Arabic.

What's it working on now?

The centre held its 40th birthday in 2019, which it coordinated with the release of a French version of its rules (as part of its plan to attract work from Africa).

It's also stepped up its educational output – both in Cairo and the near abroad – with a particular focus on links in Africa.

It's upgraded its website considerably, too, in recent years. It's now one of the best and most up-to-date out there.

Institutions Worth a Closer Look

Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)

Why's it worth considering?

The ADCCAC had a monopoly on arbitrations seated in Abu Dhabi for many years – there were no other local providers. Local companies were encouraged to support it, so “cases fell in its lap”.

Statistics haven't been its strong point of late but there was a time it was reporting 70 or so new cases a year.

What type of cases go there?

It's a mixture. In 2014 the last year for which we have real information it was hearing a mix of small real estate disputes and a few much larger matters about power projects, infrastructure, joint-venture agreements, etc.

How up to date are the rules?

They're more up to date than once upon a time but that's not saying very much. The current rules date from 2013. Until they came along it was using a set from 1993, and the process was said to be “like stepping back in time”: for example, there was no scale of fees, so every element of all fees had to be negotiated from scratch. And all fees were non-refundable, even if the case settled. (It was also unclear how you actually initiated arbitration or what should happen if one side didn't show up.)

The 2013 rules ironed out many of those kinks. They're patterned on the UNCITRAL model (and a few other well-known institutions), with the addition of a couple of region-specific features. One explicitly reminds parties that if you're aware that one of the centre's rules is being ignored and don't mention it, you've waived the right. This stops a side from storing up procedural “errors” to use for challenges later (which is something of a local sport). The rules also fill in some other gaps, such as adding a confidentiality provision and immunity for arbitrators and the institution.

Unfortunately, things have moved on apace in Abu Dhabi and elsewhere in the region. The ADCCAC has begun to look forlorn and out of date.

Its facilities are drab compared with the new Abu Dhabi Global Markets freezone where the ICC and others have offices.

Hence the government has decided it is for the chop ...

The ADCCAC is being shut down?

That's the word on the street. The government asked Gary Born to lead a project to create a new centre – the Abu Dhabi International Arbitration Centre (the “ADIAC”). It's expected to be unveiled before the end of 2023

What will happen to the ADCCAC?

It's going to cease to exist (“it will be killed”) according to one source, and any cases that arise under its clauses will go to new institution. Parties will be able to choose between the old ADCCAC rules or the new ADIAC ones.

Sounds a bit draconian ...

Perhaps but on the other hand something needed to be done. There were a number of ill-designed aspects to ADCCAC. For a start the range of arbitrators you could realistically choose was poor. There was freedom to appoint whomever you want, but first they would have to join the ADCCAC's list. That cost around US\$400 a year. More importantly, they would have to supply an authenticated “no criminal convictions” certificate from their place of origin or residence. It's unlikely the fees they would earn would justify the pallava.

But the real issue has been declining confidence in its performance. Despite this guide's support, stories of ineptitude are on the rise. (Some quite funny: at the end of one case the secretariat mistakenly paid the parties, not the arbitrators.) It's probably reached the point where one can't really say ADCCAC is a safe pair of hands. At the same time there are a lot of ADCCAC clauses circulating so ... something had to be done.

Why are there so many clauses?

It's enjoyed the support of the Abu Dhabi government and state-owned entities. It's owned by the state through the Chamber of Commerce. This has made ADCCAC clauses at times hard to avoid.

Are there any other pitfalls?

It's not a pitfall, exactly, but know that the final award will be delivered in Arabic, even if the language of the arbitration was English. This is standard practice.

Casablanca International Mediation and Arbitration Centre (CIMAC) – new addition

What is it and why are you adding it to Worth a Closer Look?

CIMAC is the arbitral institution for Casablanca Finance City (CFC), a financial free zone governed by common law, created by the government of Morocco. The CFC was created in 2010; and CIMAC was added in 2016.

The government hopes to establish the CFC as the "gateway to Africa", and having a dependable disputes system is viewed as part of that.

After GAR took the (overdue) decision to remove one north African institution from this book, we conducted fresh research to see if another one deserved the spot.

The feedback was that CIMAC was now the class of that particular pack, albeit with a few issues.

Who runs it?

CIMAC's secretary general is Hicham Zegrari, who joined Casablanca Finance City Authority as head of legal affairs in 2010 before moving onto the arbitration centre. Zegrari is the chairman of the organising committee of the Casablanca Arbitration Days.

He's supported by Thomas Granier, a former McDermott Will & Emery practitioner who is now counsel at pan-African firm Asafo & Co, as a special adviser.

There's an oversight body – the court of arbitration – with a number of international names on it.

Who is on the court?

It's led by Laurent Lévy, the renowned Swiss arbitrator, as president. Jalal "Jil" El Ahdab of Bird & Bird and Jacob Grierson, whom Granier followed from McDermott to Asafo & Co, are vice presidents.

Members include Mohamed S Abdel Wahab, Dorothy Ufot SAN and Ina Popova, of Debevoise & Plimpton.

Has it had any cases yet?

It has, but not very many. As of March 2022, the centre was administering two arbitrations, one with an international party.

What are the issues you alluded to earlier?

There are murmurings that CIMAC is too international and insufficiently rooted in its region. It's presenting itself, as one person put it, as an "elitist place for foreign investors only".

As part of their evidence, these critics point to the composition of the court. Rather than seeing a surprisingly international-looking body, they note there are 10 European or American court members and only six from the MENA region.

This particular assessment seems a bit unfair. The court looks about 50-50 these days.

Still, all centres do need local buy-in. CIMAC will face a few headwinds if parts of its ecosystem feel excluded.

Common Court of Justice and Arbitration (CCJA)

Why's it Worth a Closer Look?

The CCJA is the supreme court for all disputes under OHADA law. It's also, however, an arbitral institution for arbitrations under the CCJA rules.

As well as confirming and appointing arbitrators and administering those cases it also acts as the supervisory court for arbitrations conducted under its banner.

What's it like?

It's a hybrid between a supreme court and an arbitration centre. The "court" part consists of 13 judges selected by the OHADA council of ministers, for seven-year terms (non-renewable). The judges are organised into three chambers.

The arbitration centre consists of the court plus a – small – secretariat. They were both established in 1998 and made their first decisions in 2001.

So it's not the ICC, but it's also no start-up.

Any pitfalls?

The arbitration centre shares the same space as the OHADA court, so arbitral tribunals have to work around the OHADA court's schedule. Tribunals often choose to sit away from Abidjan for that reason.

It's also a very francophone organisation – and not always comfortable working in English. Staff are reported to be a bit unresponsive – possibly because there are too few. But the issue that's caught most headlines over the years is fees.

What's the issue with fees?

First, the CCJA's official arbitrator rates are phenomenally low for the type of work required. Its fee scale hasn't changed in 16 years.

Because of that, some arbitrators had started to develop workarounds. That led the "Getma affair", where the CCJA set aside an award because the tribunal had negotiated a side deal with the parties for more pay (the arbitrators described the official pay for the case – €60,000 – as tantamount to "charity").

Is OHADA aware of the problem?

It is, and the Getma decision has had an effect. In the aftermath, OHADA commissioned an audit by PwC, which led to two disciplinary proceedings. As part of that Marcel Sérékoisse-Samba, president of the court, was suspended. He admitted to poor record keeping but denied actual dishonesty. His suspension was eventually lifted and he completed his term.

Are there any other quirks?

It's more than a quirk, actually. The CCJA is both the arbitral body and the court of the seat. Thus, it can play a role both at the outset - setting up a case (hearing challenges to arbitrators, fixing fees etc) – and the end (hearing complaints about due process or other sacraments of arbitration). In between, it may review the award for technical strength (similarly to the ICC).

It's a strange amalgam and looks a lot at first blush as if the court judges itself.

The CCJA is aware of this criticism. It takes steps to ensure different judges handle the various stages. Nevertheless, it remains an atypical approach and may come as a shock.

What sort of cases are most suitable to go there?

It's particularly useful for any dispute that may turn on OHADA law – the suite of business laws adopted by 17 west and central African countries, with the aim of harmonising commercial law locally. The CCJA is a creature of the OHADA system. A number of OHADA states now write CCJA clauses into their commercial contracts. Thus, CCJA arbitration is often in effect "imposed".

What are the rules like?

The current rules are from 2018. They fixed a number of problems that had emerged in the earlier version – particularly around the nationality of judges allowed to deal with a particular arbitration (no one from the same nation as the parties), and impartiality of the arbitrators. They also gave arbitrators expanded powers to consolidate and suspend proceedings.

Any pitfalls?

As the Getma case showed, there are various ways that OHADA member states can influence the composition of the court (much as the EU member states do over the bench for European courts). Despite the organisation's efforts, at times the court may still seem insufficiently independent.

Are there any advantages?

Several states that haven't signed the New York Convention have signed the OHADA convention.

Dubai International Arbitration Centre (DIAC)

Why's it only in Worth a Closer Look?

The DIAC was demoted a few editions back from the tier above, largely for being without a director for nine years.

As an institution, it's always had good case numbers and a hardworking, longsuffering, staff that few regular users think would ever make a serious error on a case.

But it did appear to have some more fundamental issues impeding any sense of direction.

2023 finds all that in the past and the DIAC transformed, following the cancellation of its nearest competitor and the bequest of its work to the DIAC.

After some teething problems, the DIAC is at long last looking like a good place. It has a registrar (you guessed: the head of the former competitor that saw itself expunged), plus executive director; the cases that were in limbo and attracting negative attention to it and the Emirate are moving again; and it has added seven internationally qualified staff to its case handling team.

Its future looks bright.

It is a cut above every other institution on this tier.

However, memories are long and Dubai can be a whimsical place. Against that backdrop, we've opted for a cautious stance. We'll give everything a year to bed in before promoting it. But a promotion back to Whitelist looks all but certain soon.

How did it get into a less good state?

DIAC traces its roots to 1994. Between then and the early 2000s Dubai's population decided it had little regard for the local courts, and many switched to the DIAC. So it soon had plenty of work, of all shapes and sizes –from everyday landlord–tenant fights up to big international disputes.

After the financial crisis, things boomed. It had 500+ new case requests in one year. The powers that be recruited Nassib Ziadé, formerly of the ICSID, at the World Bank (now of the BCDR in Bahrain) as director. Under his auspices, the DIAC enjoyed a purple patch until 2013 when he – unexpectedly – resigned.

He wasn't replaced and the DIAC was without a director – for nearly 10 years.

That period saw the rise of a competitor – the DIFC-LCIA – and a decline in DIAC's caseload.

What sort of caseload does it have now?

Its caseload dwarfs every other institution in the region. It had 650 active cases in 2023 (this of course includes cases bequeathed to it during the unpleasantness of last year)

Even when it was only receiving far fewer per year – only around 200 new requests a year – that was far ahead of any other Middle Eastern institution.

Nowadays case numbers are on the rise again. It registered 340 new cases in 2022, which was up on the year before.

And since DIFC-LCIA clauses now point to the DIAC, it's likely the new request figure will be even higher. The DIFC-LCIA was receiving 80 or so requests per year by the time of its demise. (It had 180 cases on the go when it was shut down).

What does the future hold?

It's looking bright – barring any more strange local events.

The DIAC has new rules as of 2022, and despite some difficulty (if rumours are to be believed), a new court, of 13 well known names – among them Michael Pryles KC and Albert Jan van den Berg (who helped to establish DIAC).

Most importantly perhaps, it has an executive director, Jehad Kazim, *and*, at long last, a registrar!

One Robert Stephen - who used to run the DIFC-LCIA.

It's also recruited a "new" secretariat, one that contains much more international experience than before, to supplement the legacy DIAC team (which as mentioned has all ways been nothing but well regarded).

In all now, 10 counsel and other case-handlers have joined, each with experience either at international law firms or other arbitral providers. They include Christoffer Coello Hedberg, who has become deputy registrar. He was with the SCC in Stockholm for two years and before then Linklaters

Is there anything important to note about the rules?

They changed what they do regarding the seat. In the absence of agreement on this, the DIAC will presume the seat to be the DIFC, the common law governed free-zone.

This is a big change from the 2007 rules – when the "onshore" part of the UAE was the default.

Kigali International Arbitration Centre (KIAC)

Why's it Worth a Closer Look?

Rwanda is seeking to establish itself as business hub for East Africa. The KIAC is its capital's arbitration institution. Launched in 2012 it got off to a fast start and has now administered more than 200 cases, of which around 40 per cent were in some for international.

What's its caseload like?

The KIAC enjoyed good numbers for a "baby" institution, from the very start. It had an impressive 24 cases in its first three years.

It now averages 25 to 30 new cases a year (as of 2017).

What's driving that?

It's done an excellent job of promoting itself, and arbitration locally. The government now writes the KIAC into its contracts. There's a good chance if you are dealing with a state entity there it will be suggested.

It's also managed to pull in cases from the near abroad. African businesses that are wary of going to Europe are willing to consider Kigali instead.

It's achieved that in part through time spent capacity-building. In 2020 for example it helped launch a Rwandan chapter of the CI Arb. And it's prominent at all of the African arbitration conferences and associations that are at long last emerging.

How international is the work?

Around 40 per cent of the work features one sides that's non-Rwandan. In its life, its handled cases featuring parties from 20+ countries. It's even had one matter where both sides were Chinese.

Is it independent of the government?

Yes, it's a private institution. Although the government endorses it (strongly), nobody has flagged any concerns about its independence. And the government's lost plenty of cases there.

Any pitfalls?

It has had a change of funding. The grants it benefited from in its first few years have expired but it can't replace them with higher case fees because, well, it needs to keep arbitration affordable. So it's now charging for peripherals – events, training, inclusion in its list of arbitrators. None of this should be begrudged.

There's also uncertainty about what would happen if the government failed to comply with a KIAC award. So far it always has. But if didn't, would the courts enforce? This isn't something within the KIAC's gift. It's pertinent solely because it would affect demand.

Mauritius International Arbitration Centre (MIAC)

What is it?

MIAC is relaunched version of the LCIA-MIAC, now independent and backed by the government.

What happened to the LCIA-MIAC?

We don't entirely know. It closed its doors in late 2017, shortly after the government unexpectedly changed. It's thought the two developments are linked.

But the desire to make Mauritius an arbitral hub endured – leading to the launch of MIAC. All LCIA-MIAC clauses now redirect there.

Who are the names to know?

Its advisory board was once led by prominent French practitioner Emmanuel Gaillard (sadly deceased).

Today Lucy Reed, Gabrielle Kaufmann-Kohler, Mohamed Abdel Wahab and Toby Landau KC are among the members.

Clémence Assou, who is also a counsel at the PCA, is registrar.

Does MIAC have its own rules?

Yes, they're from 2018 and are essentially UNCITRAL.

Is it busy?

The LCIA-MIAC, before it was replaced, had heard one case and had two more in the pipeline, we understand.

MIAC hasn't released any case numbers since. It did though in 2020 announce it was holding its first hearing at its hearing facilities in Port Louis. So there is clearly work taking place. A lot of Asian investment into Africa is routed through Mauritius.

What's Mauritius like as a seat?

It has a modern – and innovative – arbitration law. For instance, it expressly considers treaty arbitration (few others do). And, unusually for a common law seat it includes "the negative effect of competence-competence" (no court shall touch an arbitration matter until an arbitrator has ruled).

Usefully, it also requires local courts to give arbitration matters priority scheduling (very good for interim measures request) and to make more parts of cases private. Finally, all arbitration cases go to standing panel of the same six judges – so that expertise and consistency develops on the part of the courts.

Is the PCA also part of the setup?

Yes. It's the backstop to most of the Mauritius system. The law makes it, not local courts, the default appointing authority – a very international move. MIAC's rules refer numerous questions to the secretary general of the PCA. Hence the registrar is also a counsel at the PCA.

Qatar International Centre for Conciliation and Arbitration (QICCA)

What is it?

QICCA is Qatar's 'regional' arbitration provider.

It's been around since 2006, though it is still fairly unknown.

For many years it was ably led by the well-respected Egyptian lawyer and academic, Minas Khatchadourian (1958–2021).

Why is it Worth a Closer Look?

A lot of government entities in Qatar insist on QICCA clauses, so the general view is that there's potential for a lot of QICCA work.

It doesn't have many cases and reviews are somewhat mixed. One source who's had several first-hand experiences with the centre describes it as "very impressive".

Others have found its performance woeful. One quipped it should be renamed "slower".

Is it busy?

It's not great at putting out annual statistics. But the answer seems to be: reasonably.

According to the chapter on Qatar in GAR's commercial arbitration know-how, QICCA issued 50 awards in 2022.

Fifty-eight per cent of those were under its own rules; 42 per cent ad hoc. A fifth of the cases were construction.

Forty seven percent of those cases took place in English. The rest, Arabic.

Is it doing anything to grow its appeal beyond Qatar?

Khatchadourian, before he died, was a professor and a respected regional arbitrator. He did much to promote it. He was regular at regional events and did much to make QICCA more palatable to outsiders, such as expanding its roster of arbitrators to include more internationals.

Since he's left there seems to be a vacuum when it comes to QICCA's presence.

What is Qatar like as a seat?

It's improved – but from a low starting point. It didn't have a separate arbitration law until 2017, and before that lower courts would often produce arbitration-unfriendly decisions (usually reversed on appeal).

In one notable example from that era an award was set aside because it failed to say it was "made in the name of Emir Sheikh Tamim bin Hamad Al Thani (the ruler)". This is a requirement for the decisions of courts. Strictly speaking it isn't applicable to arbitration awards.

More recently, arbitrators have been sentenced to prison terms for deciding they had jurisdiction over a case.

The law of 2017 has cut down the courts' ability to interfere, but some scope remains.

Is it non-profit?

It's non-profit and part of the Qatar Chamber of Commerce and Industry.

Can I appoint whoever I want as arbitrator?

You can, but in practice, you'll probably need an arbitrator who knows the relevant laws of the Gulf Cooperation Council simply because of the contracts that tend to be at stake. To assist the centre maintains a list of around 150 individuals. It's "indicative only".

Will I be able to appoint an international arbitrator, if I want?

This can depend. The rate of pay is pretty low and according to one source "some arbitrators are not prepared to accept appointments because of the low fees and poor admin".

Those who will accept appointments will probably want to think carefully about it. "Not only are the fees small but arbitrators also have to the secretariat to get the parties to agree to cover their transport and hotels" according to one arbitrator who sits there from time to time. "They then won't pay out a single fil [the smallest unit of local currency] until after the award has been delivered. No interim payments. So cashflow is an issue." []

But for a big enough case: you might well be able to interest an international name who regularly sits in the Gulf.

How big is the secretariat?

Three case managers and a full-time secretary, who can work in English and Arabic.

Aside from problems with the local courts, are there any downsides?

Qatar has a rule that arbitrators must be physically present for all hearings and other “acts of authority”. This includes signing every page of the award in the kingdom.

There are also some quirks in the rules. The default position is that arbitrators should decide ex aequo et bono unless parties agree otherwise.

Furthermore, all correspondence has to be on paper until after the tribunal is constituted (and then email is only allowed if all parties agree), which is tiresome. It can also be hard to get an extension on your time to file a response.

QICCA's aware of these complaints and has said it will draft new rules. It's been saying that for years, though.

When they do arrive, they're expected to be based on UNCITRAL rules.

Who's in charge?

Since Minas Khatchadourian died it has been without a secretary general (almost three years now).

Ibrahim Shahbik is deputy secretary general.

The Saudi Center for Commercial Arbitration (SCCA) – new for this edition

Why's it Worth a Closer look?

It's a newish institution, run by good people, that “would not totally screw up an arbitration” as one forthright but representative source summarised.

International parties and arbitrators haven't had a lot of exposure to it – yet. But that will change, as it has a lot of government backing (moral rather than financial).

It's one of two institutions on this part of the list that look headed upwards (the other is the DIAC; the ADDCCAC and possibly QICCA are headed the other way).

How new is it?

It was set up by ministerial decree in 2014, as a non profit organisation.

It aims [] to be “the preferred ADR choice in the region by 2030”.

Is it busy?

It hasn't released statistics for 2022 but had 82 cases in 2021 and 75 the year before. This is a significant hike on previous years.

Incidentally those are “cases underway”. It didn't divulge a new requests figure but between 30 and 50 sounds about right.

How international are those cases?

Not very, as yet. If you ask international types if what it's like for a case, they tend to say, I've not yet had a case there.

Historically, it's heard mostly domestic disputes, in Arabic, before Saudi arbitrators

But that is expected to change.

In 2021 eight of the 82 cases had one foreign side.

What is arbitration there like?

You'll definitely recognise it.

There's a secretariat and a court, with 15 impressive names. They include Jan Paulsson, Larry Shore, James Hosking, Alec Emmerson and Jennifer Kirby. There's also a well-connected advisory board (to steer direction of travel, not assist on cases).

Reports on the secretariat are mixed. Some have found the case-handlers excellent. "As professional and competent as the ICC and LCIA," said one.

Others are more measured: "It's more or less like arbitrating at the DIAC in terms of rules, and slightly better than ADCCAC in terms of case management," sums up this camp.

Several we interviewed said it's obvious many of the staff are still inexperienced. Even on quite simple points, some case-handlers will request time to check with a superior, rather than take a decision— as if doing something for the first time.

The secretariat's decisions on time limits were particularly singled out as "unpredictable".

How is it growing its caseload so fast?

The government has had a lot to do with it. First, it's made it very clear it blesses the centre.

Second, it's removed various obstacles to going there (the need to seek permission for arbitration that otherwise applies, if you are a state-connected entity) and made it the default in many of its own contracts

As a result of both, many mega-project owners now include SCCA clauses as standard in all their contracts. With hundreds of contractors per project, it all adds up fast.

And Saudi Arabia is all mega projects right now. The money flowing there is described as extraordinary.

Can I appoint whoever I like?

In theory, yes. But to date, not many non Saudi arbitrators have sat there.

But that's a function of the caseload, which is expected to change (rapidly) given the clauses that are now out there.

Foreigners who have sat there (that GAR knows of) include Georges Affaki, Mohamed Abdel Wahab and Ahmed Ibrahim.

Under Saudi law, you do now have full party autonomy. Under the older law, all arbitrators had to be male and Muslim.

There's still one residual limitation. Sole arbitrators and tribunal chairs are required to hold a law degree, a fact not everybody likes.

Who are the names to know?

The SCCA is credited with having hired "some good people".

The most important among them are probably Hamed Merha and Christian Alberti.

Merha is CEO, Alberti head of ADR and general counsel. Alberti is more hands-on on cases – akin to a deputy secretary general – while Merha's is the secretary general.

Alberti has international pedigree - he's a dual qualified German lawyer who spent 13 years at the ICDR in New York; Merha is Saudi trained and well regarded locally.

Alberti divides his time between Riyadh and Dubai, while Merha works from Saudi.

They're seen a strong duo and a big part of why the SCCA is seen as having such energy.

"They're both really good!" was a regular comment.

Are there any pitfalls for the unwary?

It's not a pitfall as such but the information on fees given to arbitrators could be clearer. Several report being left uncertain what they'd actually be paid. But the rates look as if they might be at the same level as the ICC.

The forms inviting arbitrators to act are also described as “unusual”. They include several question about tax residency and double taxation treaties. Similarly the document on disclosures is repetitive and overlong.

The SCCA will soon need larger hearing rooms, if all the expected work materialises. One person with direct experience of its space in Riyadh said: “In Riyadh I believe there's only one large hearing room. The others were fairly small and way too small to handle the kinds of arbitrations we will expect to see coming out of [Saudi Arabia].”

It's also worth remembering: the new version of Saudi arbitration law, while regarded as much more pro-arbitration, is largely untested. So “you just don't know what you'll get”, says one source.

Can foreign counsel appear in the kingdom, and can women sit as arbitrators?

Yes under the new law foreign counsel can work and women can sit. And courts endorsed the second recently. It's about the only aspect of the new law to be tested.

Is there anything else to know?

In early 2023, the SCCA opened an office in the DIFC, in Dubai